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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CITY OF SAN DIEGO,

Plaintiff,

v.

SAN DIEGO INVESTMENTS et al.,

Defendants;

MJB RESEARCH, LLC,

Movant and Appellant;

THE SUPERIOR COURT OF SAN DIEGO
COUNTY,

Objector and Respondent.

D055366

(Super. Ct. No. 506239)

APPEAL from an order of the Superior Court of San Diego County, Richard J. Oberholzer, Judge. (Retired judge of the Kern County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.) Affirmed.

I.

INTRODUCTION

Government Code¹ section 68084.1 provides generally that money that has been deposited with a court and remains unclaimed for three years shall become the property of the court, if the money remains unclaimed after the court provides a specified form of published notice. MJB Research, LLC (MJB Research) filed a motion for release of funds that it claimed had been deposited with the Superior Court of San Diego County (the Superior Court)² in favor of its predecessor in interest in this action. After the Superior Court opposed the motion on the ground that the funds had escheated to the Superior Court pursuant to section 68084.1, MJB Research claimed that the escheatment of the funds violated its constitutional right to due process. The trial court denied MJB Research's motion for release of funds, concluding that the funds had properly escheated to the Superior Court, and that the escheatment had not violated MJB Research's right to due process.

On appeal, MJB Research contends that section 68084.1 is facially unconstitutional. Specifically, MJB Research claims that section 68084.1 deprives owners of unclaimed money procedural due process because the statute does not require a

¹ Unless otherwise specified, all subsequent statutory references are to the Government Code.

² Throughout this opinion we refer to objector/respondent as "the Superior Court," and refer to the trial court in this case as "the trial court."

court provide the owners with adequate notice that their money may become the property of that court. We affirm the trial court's order.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The underlying eminent domain case*

In July 1983, the City of San Diego (the City) filed a complaint in eminent domain seeking to take various parcels of private property in connection with the widening of a road in Otay Mesa. Among the parcels that the City sought to take were "Parcels 36, 36A, 36B, 36C." The City claimed that Parcels 36, 36A, 36B, and 36C were owned by an entity named San Diego Investments, and that several other entities also had interests in the parcels, pursuant to various deeds of trusts. That same month, the City deposited \$50,550 with the San Diego County Clerk as the amount of just compensation likely to be awarded for the taking of Parcel 36.³

In July 1988, the trial court entered a default judgment in favor of the City with respect to Parcels 36, 36A, 36B, and 36C. The default judgment stated that all of the entities named in the complaint as allegedly having an interest in the parcels had been served with the summons and complaint, and that each of these entities had either filed a disclaimer of any interest in the parcels, or had defaulted. The default judgment specifically stated that San Diego Investments had been served with the summons and complaint in the action in July 1983, and that the court had entered a default against

³ It appears to be undisputed that the County Clerk was acting on behalf of the Superior Court.

San Diego Investments in August 1987. The default judgment directed the City to make an additional payment of \$4,950 to the court for the taking of the parcels, and provided that \$55,500 constituted full and just compensation for Parcels 36, 36A, 36B, and 36C.

B. *The 2004 motion for release of funds*

In November 2004, The Wayne Seminoff Company (Seminoff) filed a motion for release of the funds on deposit in connection with the condemnation of Parcels 36, 36A, 36B, and 36C. In its motion, Seminoff claimed that it was acting as an "assignee for collection" on behalf of San Diego Investments. Seminoff maintained that it was entitled to the principal amount of \$55,500 and also to compound interest believed to be in excess of \$214,000. Along with its motion, Seminoff filed a brief and lodged various exhibits that it claimed demonstrated its entitlement to the funds.

In January 2005, the Superior Court filed an opposition to Seminoff's motion. In its opposition, the Superior Court claimed that Seminoff had not presented any "authentic" evidence that it had been assigned the rights to the condemnation proceeds deposited in the underlying eminent domain case. The Superior Court also argued that Seminoff had failed to demonstrate that the other entities listed in the default judgment as having an interest in the parcels had been provided notice of Seminoff's claimed interest, or that these entities had disclaimed any entitlement to the condemnation proceeds.

In March 2005, Seminoff withdrew its motion for release of funds. In its notice of withdrawal, Seminoff stated that it was withdrawing its pending motion for release of funds "without prejudice to its re-filing the motion at a later date upon the conclusion of

the pending investigation by counsel by the moving and responding parties into the underlying facts of the motion."

C. *MJB Research's motion for release of funds*

In September 2008, MJB Research filed a motion for release of the funds on deposit in connection with the condemnation of Parcels 36, 36A, 36B, and 36C. In its motion, MJB Research claimed that it was acting as an "assignee and agent for Allen Jaffe, trustee UDT Dated July 23, 1982, General Partner of Otay Mesa Investments, a California partnership, successor in interest to defendant San Diego Investments. . . ." MJB Research attached to its motion and briefs various exhibits that purported to demonstrate MJB Research's entitlement to the deposited funds, including assignments executed by Jaffe and Seminoff in favor of MJB Research, a declaration executed by Jaffe, reconveyances of trust deeds purportedly held on the parcels, a fictitious business statement for Otay Mesa Investments, a quitclaim deed from San Diego Investments to Otay Mesa Investments dated November 1987 for a parcel of property that purportedly included Parcels 36, 36A, 36B, and 36C, and the final order of condemnation of Parcels 36, 36A, 36B, and 36C.

The Superior Court filed an opposition to MJB's motion. In its opposition, the Superior Court claimed that the funds had escheated to the Superior Court in May 2008, pursuant to section 68084.1. The Superior Court also claimed that, assuming the funds had not properly escheated, MJB Research had not established that it was the proper entity to receive the deposited funds. Finally, the Superior Court maintained that MJB Research's claim was barred because it had failed to present a claim to the Superior Court

pursuant to the Government Claims Act (§ 945.5). With its opposition, the Superior Court filed a declaration and various exhibits demonstrating the May 2008 escheatment of the funds.

MJB Research filed a reply in which it claimed that the funds had not properly escheated to the Superior Court because section 68084.1 is unconstitutional. MJB Research asserted, "[T]he inadequate notice provisions of [section] 68084.1 are in violation of the constitutional right to due process." Specifically, MJB Research claimed that the provision in section 68084.1 for notice by publication did not provide its predecessors in interest with adequate notice that the Superior Court was seeking escheatment of the deposited funds. MJB Research also disputed the Superior Court's contention that MJB Research had not demonstrated that it was the proper entity to receive the funds. In addition, MJB Research maintained that it was not required to file a claim pursuant to the Government Claims Act in order to receive the deposited funds. MJB Research attached numerous additional documents to its reply in an attempt to demonstrate that it was the proper entity to receive the deposited funds, including an additional declaration executed by Jaffe, and partnership statements from both San Diego Investments and Otay Mesa Investments.

In March 2009, the trial court held a hearing on MJB Research's motion. At the hearing, the trial court asked counsel for both MJB Research and the Superior Court various questions concerning whether MJB Research had properly demonstrated that it was a successor in interest to the entity that would have been entitled to the deposited funds, prior to the alleged escheatment. After acknowledging that the record as to the

chain of title to Parcels 36, 36A, 36B, and 36C was not entirely clear, MJB Research's counsel argued that MJB Research had presented sufficient evidence to demonstrate that it was the proper successor in interest to San Diego Investments.⁴ Counsel for the Superior Court responded, "[It is] 21 years after the default judgment was entered [against] the assignee's predecessor in interest, and to this moment we still don't know if there is, in fact, a clear chain of title, as the [trial court] noted."

The trial court also engaged in an extended discussion with both counsel regarding the constitutionality of the notice provisions of section 68084.1. During this discussion, the Superior Court's counsel stated that any "as applied" challenge to the constitutionality of section 68084.1 must fail because "even today, as of the date of this hearing, [MJB Research] is missing a key piece of the chain of title." The Superior Court's counsel also questioned whether MJB Research had standing to challenge the constitutionality of section 68084.1 at all, given that MJB Research had not established that it was a proper successor in interest to the deposited funds. The trial court responded, "I'm not sure if he first establishes standing and then [raises the constitutional claim] or if he can bring the [constitutional claim] initially and then establish his right."

At the conclusion of the hearing, the trial court took a brief recess, after which it orally denied the motion. The trial court stated, "[T]here's an initial issue of the

⁴ MJB Research's counsel stated that MJB Research had attempted to demonstrate that San Diego Investments was the only entity that still had a claim to the deposited funds. Counsel argued, "[N]ow it's a question of who is this Allen Jaffe over here, is he really the predecessor of San Diego Investments, and that's the thing we've been looking for."

constitutionality of [section] 68084.1 that must be resolved, and if it's resolved in favor of the [Superior] Court, then the case is over, if it goes that far." The court noted that MJB Research's primary claim was that section 68084.1 is unconstitutional because the provision in the statute for notice by way of publication does not provide adequate notice to owners of unclaimed money that a court is seeking ownership of the money. As to this claim, the trial court stated, "[P]ublication is not an unusual form of identifying parties . . . it's common where parties even are known but their whereabouts are unknown. So it's not an unusual form of due process or notification, I should say, and therefore I conclude that it meets the requirements of due process as established by our Constitution."

The trial court proceeded to consider how the statute had been applied "in this particular case. . . ." As to this issue, the trial court noted that "the specific party [that MJB Research claims] should have received some notice is one that had abandoned their claim in 2004." The trial court concluded, "[T]here was no necessity for the court to give any additional notice other than that required in [section] 68084.1, instead of guessing that, well, maybe these people did have a claim and maybe we should notify them anyhow even though they abandoned it. [¶] With that in mind, [the trial court] finds that the application of section 68084.1 of the Government Code in this particular case meets the constitutional mandates of due process. As such, the money . . . escheated to the [Superior] Court."

The trial court entered a written order denying MJB's Research motion for release of funds on April 20, 2009. In its order, the trial court stated that the funds had escheated to the Superior Court in accordance with section 68084.1. The court further stated:

"Neither the statute nor procedural due process required that the Superior Court give specific notice to MJB [Research]. MJB [Research] has appeared in this action as the alleged assignee of San Diego Investments and Allen Jaffee ("Jaffee") and The Wayne Seminoff Company ("Seminoff"). The condemnation funds in question were deposited into the Treasury of the County of San Diego A default judgment for the plaintiff, City of San Diego, was entered on July 1, 1988, adjudging \$55,500 as full and just compensation by Plaintiff for [the parcels] as to all defendants including San Diego Investments, the claimed predecessor in interest of MJB [Research]. In 2004, Jaffee and Seminoff made a motion for release of the deposit, but when factual questions of entitlement arose, a Notice of Withdrawal Motion was filed on March 30, 2005. No further action was taken for release of the deposit. On April 1, 2008, more than three years after the withdrawal motion was filed by MJB [Research's] predecessor in interest, the [Superior Court] published notice of escheatment pursuant to statute. No response to that notice was filed within the statutory time, and the funds rightfully escheated to the Superior Court. The Superior Court followed the statutory requirements of . . . section 68084.1. The Superior Court justifiably concluded that MJB [Research's] predecessor in interest's withdrawal of its Motion for Release of Deposits and failure to pursue any further release of the deposit for more than three years, was an abandonment of any alleged interest and, therefore, any specific notice to MJB [Research] or its predecessor was not required for the escheatment of the funds."

MJB Research timely appeals the April 20, 2009 order.

III.

DISCUSSION

Section 68084.1 is facially constitutional

MJB Research contends that section 68084.1 is facially unconstitutional in that it violates procedural due process. Specifically, MJB Research claims that section 68084.1 is unconstitutional because it does not require that a court provide adequate notice to owners of unclaimed money that their money may become the property of a court pursuant to the statute. We apply the de novo standard of review to this claim. (E.g., *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322, 337 [facial challenges to the constitutionality of a statute are reviewed de novo].)

A. *We assume for purposes of this decision that MJB Research has standing to raise its facial challenge*

As a general rule, only a member of the class of persons affected by the measure may raise a constitutional challenge. (*Johnson v. Department of Social Services* (1981) 123 Cal.App.3d 878, 883 (*Johnson*); *Matrixx Initiatives, Inc. v. Doe* (2006) 138 Cal.App.4th 872, 876-877.) A trial court's factual determinations that bear upon the issue of standing are reviewed to determine whether there is substantial evidence to support them. (*Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 481.)

It would appear that only a party who is affected by the escheatment provisions of section 68084.1 has standing to bring a constitutional challenge to the statute. (See *Johnson, supra*, 123 Cal.App.3d at p. 883.) Absent such a circumstance, the party

challenging the constitutionality of section 68084.1 would not be able to demonstrate its entitlement to any relief based on the alleged unconstitutionality.

MJB Research did not establish in the trial court that it was the successor in interest to the entity that was previously entitled to the escheated condemnation proceeds that were deposited in the underlying eminent domain case.⁵ In its final ruling denying MJB Research's motion for release of funds, the trial court referred to MJB Research as the "*alleged* assignee" of San Diego Investments, Jaffe, and Seminoff, stated that San Diego Investments was the "*claimed* predecessor in interest of MJB [Research]," and concluded that San Diego Investments had abandoned its "*alleged* interest," in the deposited funds. (Italics added.) However, the trial court did not rule that MJB Research was *not* the successor in interest to the entity entitled to the deposited funds, prior to the 2008 escheatment. Instead, the trial court simply considered, and rejected on the merits, MJB Research's constitutional claims related to section 68084.1.⁶

The trial court did not make any factual findings that this court could review to determine whether MJB Research has standing to raise the facial constitutional claim that it raises on appeal. In light of the unusual procedural posture of this case, in which there are no factual findings on the issue of standing, and our conclusion that MJB Research's

⁵ MJB Research does not dispute that the Superior Court followed the proper statutory procedures for effectuating an escheatment of the deposited funds pursuant to section 68084.1. MJB Research challenges only whether escheatment pursuant to section 68084.1 is constitutional.

⁶ The trial court's comments at the hearing indicate that the trial court concluded that MJB Research had raised both a facial challenge and an "as applied" challenge in that court. (See pt. II.C., *ante*.)

claim fails on the merits (see pt. III.C., *post*), we will assume for purposes of this decision that MJB Research has standing to raise its facial constitutional challenge. (See *Johnson, supra*, 123 Cal.App.3d at p. 883 ["We have some reservations about appellants' standing in this action; however, we address the merits"].)⁷

B. *Governing law*

1. *The standard for prevailing on a facial challenge to the constitutionality of a statute*

In *In re Guardianship of Ann S.* (2009) 45 Cal.4th 1110 at pages 1126-1127 (*Ann S.*), the California Supreme Court held that a litigant who seeks to prevail on a facial challenge to the constitutionality of a statute must establish, at a minimum, that the statute is unconstitutional "'in the generality or great majority of cases.' [Citations.]" (Italics omitted; accord *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 (*Tobe*) ["A facial challenge to the constitutional validity of a statute or ordinance considers only

⁷ We have considered whether this court may *assume* that MJB Research has standing to raise this claim, in light of the fact that standing is frequently described as a jurisdictional prerequisite. (See, e.g. *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 981.) California appellate courts have frequently employed various assumptions related to the issue of standing in cases in which a party's standing to assert a particular claim was in question. (E.g., *People v. Alfaro* (2007) 41 Cal.4th 1277, 1332 ["We assume, without deciding, that defendant has standing to invoke provisions of the international charters and agreements upon which she relies"]; *Chau v. Starbucks Corp.* (2009) 174 Cal.App.4th 688, 691, fn. 2 ["[W]e assume, but do not decide, that Chau had standing under the UCL to enforce section 351"]; *Padres Hacia Una Vida Mejor v. Davis* (2002) 96 Cal.App.4th 1123, 1129 ["For purposes of this decision, we assume without deciding that the County and S-K have standing to bring this appeal"]; *Wawanesa Mutual Ins. Co. v. Matlock* (1997) 60 Cal.App.4th 583, 586 ["For purposes of the present case, we will assume, without deciding, that Wawanesa has standing to raise the violation of section 308 as a basis on which to predicate a negligence per se claim"].) In light of these cases, we will assume for purposes of this decision that MJB Research has standing to raise a facial challenge to section 68084.1.

the text of the measure itself, not its application to the particular circumstances of an individual"].)⁸

2. *Constitutionally sufficient notice of potential escheatment involving unclaimed property*

In *Security Sav. Bank v. State of California* (1923) 263 U.S. 282, 283-284 (*Security Sav. Bank*), the United States Supreme Court considered the constitutionality of a California statute that allowed for the escheatment to the state of bank deposits that had been unclaimed for 20 years. The statute required that the state file suit seeking escheatment and that it effect personal service on the bank in which the deposits were being held. (*Id.* at p. 284.) In addition, the state was required to publish the summons for four weeks in a newspaper in the county in which the suit was filed. (*Id.* at p. 285.) The bank claimed that the statute's notice publication provision did not provide its depositors with adequate notice of the escheatment of their accounts. (*Id.* at p. 286.)

The court rejected the bank's argument, stating:

"It is urged that the notice is insufficient, because service may not be made by publication until it has been shown by affidavit that personal service is impossible or impractical. Such an affidavit is a common requirement in statutes providing for service by publication on absent defendants. [Citations.] But it is not constitutionally indispensable. The reason for requiring the affidavit is that ordinarily, personal service would be more likely to acquaint a defendant with the pendency of the suit. But here the general facts which underlie the legislation establish the futility of such a requirement. It may be that in California banks usually endeavor to

⁸ The *Ann S.* court noted that some courts have applied an even stricter standard to facial constitutional challenges, requiring that a party demonstrate that the law "'inevitably pose[s] a present total and fatal conflict with applicable constitutional prohibitions.'" [Citation.]" (*Ann S., supra*, 45 Cal.4th at p. 1126.)

ascertain the whereabouts of depositors whose accounts have remained dormant for many years. The statute applies only to deposits in the name of a person who is not known to the president or managing officer of the bank to be alive, whose account has not been added to or drawn upon for twenty years, and who has not filed within that time any notice or claim giving his then residence. The Legislature evidently assumed that it would be impossible to serve such depositors personally. The Supreme Court of the state held that the Legislature was warranted in this assumption. The owners of the deposits were, therefore, treated like persons unknown. [Citation.] We cannot say that the view entertained by the Legislature and the state courts was so unreasonable as to constitute a denial of due process." (*Security Sav. Bank, supra*, 263 U.S. at pp. 288-289.)

In *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306 (*Mullane*), the United States Supreme Court considered the constitutionality of a statute that authorized corporate trustees to combine small individual trusts into a common trust fund. The *Mullane* court considered whether notice by publication in a newspaper of the settlement of the common trust fund was a sufficient form of notice to the beneficiaries. (*Id.* at pp. 307-308.) The court concluded that newspaper publication was constitutionally sufficient as to those "beneficiaries . . . whose interests or whereabouts could not with due diligence be ascertained. . . ." (*id.* at p. 317), reasoning:

"This Court has not hesitated to approve of resort to publication as a customary substitute . . . where it is not reasonably possible or practicable to give more adequate warning. Thus it has been recognized that, in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights. [Citations.]" (*Ibid.*)

In *Standard Oil Co. v. New Jersey* (1951) 341 U.S. 428 (*Standard Oil Co.*), the United States Supreme Court considered the constitutionality of a New Jersey statute that

permitted escheatment to the state of certain abandoned personal property. The statute required the state to publish a notice in a newspaper for three successive weeks identifying the property sought to be escheated and the name of the last known owner. (*Id.* at p. 433.) The Supreme Court rejected a due process challenge to the statute on the ground that the statutory notice provision was inadequate. (*Id.* at p. 431.) In reaching this conclusion, the court reasoned:

"The sound reasons stated in the foregoing cases [*Security Sav. Bank*, 263 U.S. 282 and *Mullane*, *supra*, 339 U.S. 306] for deeming the notices there given adequate to bind interested persons in the respective proceedings, lead us to the conclusion that the notice by publication in this case was adequate. If the state has the responsibility of looking after abandoned property subject to its sovereign power, these publications are adequate to affect the owner's rights." (*Id.* at pp. 434-435.)

In sum, the United States Supreme Court has held that notice by publication is generally a sufficient method by which to alert owners of unclaimed property that the state seeks to take title to their property. (*Security Sav. Bank*, *supra*, 263 U.S. at pp. 283-284; *Standard Oil*, *supra*, 341 U.S. at pp. 434-435; see also *Fong v. Westly* (2004) 117 Cal.App.4th 841, 855 [noting that in *Standard Oil Co.* the United States Supreme Court concluded that "notice by publication, as authorized by the relevant statute, was [a] constitutionally adequate" procedure by which state could take "permanent title to . . . abandoned property"].)

3. Section 68084.1

Section 68084.1, subdivision (a) provides:

"(a) Except as otherwise provided by law, any money, excluding restitution to victims, that has been deposited with a superior court,

or that a superior court is holding in trust for the lawful owner, in a court bank account or in a court trust account in a county treasury, that remains unclaimed for three years shall become the property of the superior court if, after published notice pursuant to this section, the money is not claimed or no verified complaint is filed and served."

Section 68084.1, subdivision (b) specifies the manner by which a court is to provide the notice referred to in section 68084.1, subdivision (a):

"(b) At any time after the expiration of the three-year period specified in subdivision (a), the executive officer of the superior court may cause a notice to be published once a week for two successive weeks in a newspaper of general circulation published in the county in which the court is located. The notice shall state the amount of money, the fund in which it is held, and that it is proposed that the money will become the property of the court on a designated date not less than 45 days nor more than 60 days after the first publication of the notice."

Section 68084.1, subdivision (c) provides the manner by which a party may file a claim for unclaimed money under the statute:

"(c) Before or after publication, a party of interest may file a claim with the court executive officer that shall include the claimant's name, address, amount of claim, the grounds on which the claim is founded, and any other information that may be required by the court executive officer. The claim shall be filed before the designated date on which unclaimed money becomes the property of the court as provided under subdivision (b), and the executive officer shall accept or reject that claim."

Section 68084.1, subdivision (f) specifies the circumstances under which unclaimed money subject to the claim procedure outlined in section 68084.1, subdivision (c) becomes the property of the court:

"(f) If no claim is filed under subdivision (c) and the time for filing claims has expired, the money shall become the property of the court. If a claim or claims are filed with respect to a portion of the

money, but not the remainder of the money, and the time for filing claims under subdivision (c) has expired, the remainder of the money shall become the property of the court."

C. *Application*

MJB Research's primary argument on appeal is that section 68084.1 is unconstitutional because it does not require that a court attempt to provide *actual* notice to an owner of unclaimed money that the owner's money is subject to escheatment, even in cases in which the court knows the name of the owner of the money and has a last known address for the owner or the owner's attorney of record. We assume, strictly for the sake of this opinion, that MJB Research is correct that notice via publication is constitutionally insufficient when the identity of the owner of the property is known, and a court has in its possession an address for the owner or the owner's attorney. (But see *Security Sav. Bank*, 263 U.S. at p. 288 [stating that it was "not constitutionally indispensable" for state to provide affidavit that personal service was impossible or impractical before state could use newspaper publication to provide notice of escheatment of unclaimed property].)⁹

⁹ Neither of the cases that MJB Research cites in support of this proposition involved, *unclaimed* property. (See *City of New York v. New York, N. H. & H. R. Co.* (1953) 344 U.S. 293; *Mullane, supra*, 339 U.S. 306.) In *Mullane*, the Supreme Court expressly stated that the case before it did not involve *abandoned* property, and indicated that a state need not provide the same degree of notice before taking *abandoned* property as when taking *claimed* property, "A state may indulge the assumption that one who has left tangible property in the state either has abandoned it, in which case proceedings against it deprive him of nothing [citations], or that he has left some caretaker under a duty to let him know that it is being jeopardized. [Citations] . . . 'It is the part of common prudence for all those who have any interest in (a thing), to guard that interest by persons who are in a situation to protect it.'" (*Mullane, supra*, 339 U.S. at p. 316.)

Even assuming that notice via publication is unconstitutional under the circumstances described above, MJB Research's facial constitutional challenge nevertheless fails because MJB Research has not presented any evidence, nor has it even argued — as it must in order to prevail on a facial challenge — that these circumstances exist in the "great majority of cases" that involve unclaimed money subject to escheatment pursuant to section 68084.1. (*Ann S.*, *supra*, 45 Cal.4th at p. 1126.) We may not assume that in the great majority of cases in which a person has left money unclaimed with a court for three or more years that the court knows both the name of the owner of the property and has a last known address for the owner or its attorney of record. MJB Research's related contention that section 68084.1 is unconstitutional because it does not require a court to publish the name of the owner of unclaimed property, even when it has the name, fails for the same reason. MJB Research presents no evidence or argument that in the great majority of cases, the court will have such information.

In fact, MJB Research all but concedes the *facial* validity of section 68084.1 in its briefing on appeal, stating, "[T]he distinction for determining whether or not publication is a reasonable form of notice depends on the *circumstances of a case* and . . . whether it is possible or practicable to give more adequate warning." (*Italics added.*)¹⁰ Where the

¹⁰ MJB Research further acknowledges that, "Generally, an adequate method of statutory publication of notice satisfies the requirements of due process in escheat[ment] proceedings where the owner is unknown."

constitutionality of a statute allegedly depends on the "particular circumstances" of a case, a facial challenge will not be successful. (*Tobe, supra*, 9 Cal.4th at p. 1084.)

MJB Research also suggests that section 68084.1 is unconstitutional because the statute requires a court to publish its notice of escheatment for only two successive weeks and allows only a 45-60 day period in which to file a claim. We reject these contentions. The successive two week period is not significantly shorter than the publication periods that were upheld in *Security Sav. Bank, supra*, 263 U.S. at page 285 (four weeks), and *Standard Oil Co., supra*, 341 U.S. at page 433, footnote 4 (three weeks). Further, MJB Research has not cited any authority holding that a 45-60 day claim period for unclaimed money is constitutionally infirm. In light of the fact that money subject to escheatment pursuant to section 68084.1 has remained unclaimed for a minimum of three years, we see no such infirmity. Finally, we reject MJB Research's argument that section 68084.1 is unconstitutional because the notice provisions differ from the notice provisions of other statutes (e.g., Code Civ. Proc., § 1500 et seq., 28 U.S.C. § 2042) governing the disposition of unclaimed property. MJB Research has made no showing that the notice provisions in these other statutes are constitutionally required.

Having rejected MJB Research's arguments in support of its facial challenge, we emphasize the narrowness of our holding.¹¹ In its opening brief, MJB Research expressly characterized its challenge on appeal as a challenge to the constitutionality of

¹¹ Specifically, we emphasize that we express no opinion as to whether actual notice is constitutionally required in escheatment proceedings pursuant to section 68084.1 that involve money owned by known persons whose whereabouts may be reasonably ascertained.

section 68084.1 "on its face," and quoted the standard that applies to facial challenges, as identified by the *Tobe* court. At no place in its opening brief did MJB Research discuss the law that governs "as applied" constitutional challenges. (E.g., *Tobe, supra*, 9 Cal.4th at p. 1084 [as applied challenge "contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right"].) While MJB Research made some isolated references in one portion of the legal argument section of its opening brief to the particular circumstances of this case, it did so without any citation to the record to support its claims.¹² In addition, in its reply brief, MJB Research repeats its characterization of its claim on appeal as being a *facial* challenge to the constitutionality of section 68084.1. Under these circumstances, we conclude that MJB Research's facial challenge fails, and that it has not presented on appeal an "as applied" challenge to the constitutionality of section 68084.1.¹³

¹² For example, MJB Research asserts, without citation to the record, that the Superior Court "should . . . have given mailed notice to all the attorneys who had appeared in the case, as well as notice to the last known address of all the parties in the case. This information was readily available to [Superior Court] from the pleadings in the case filed by the attorneys and the proofs of service on file."

¹³ In light of our rejection of MJB Research's claim, we need not consider the Superior Court's alternative arguments for affirming the judgment.

IV.

DISPOSITION

The April 20, 2009 order is affirmed. MJB Research is to bear costs on appeal.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

McDONALD, J.